

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BRANDON A. GOODWIN,

Plaintiff,

vs.

KEITH P. HUGHES, M.D. hired  
surgeon, Individual capacity; KATHRYN  
SCHULZ, Individual capacity; DR.  
JEFFREY KASSELMAN, M.D.,  
Individual capacity; JEFFREY A.  
DAMME, M.D., Individual capacity;  
BRENDA HAITH, P.A., Individual  
capacity; CHERYL FLINN, P.A. C,  
Individual capacity; G. HUSTAD, M.D.,  
Individual capacity; JUVET CHE, M.D.,  
Individual capacity; RANDY KOHL,  
M.D., Individual capacity;  
STRASBURGER, D.R., Individual  
capacity; and DAVID SAMANI, M.D.,  
Individual capacity;

Defendants.

**4:19CV3114**

**MEMORANDUM AND ORDER**

This matter is before the court on Plaintiff's "Response to Motion to Dismiss for Defendants Haith & Kohl[]." (Filing 75.) Defendants Haith and Kohl filed a Motion to Dismiss on September 28, 2021, (filing 66), and Plaintiff's brief in opposition should have been filed by October 19, 2021. *See* NECivR 7.1(b)(1)(B) ("A brief opposing a motion to dismiss . . . must be filed and served within 21 days after the motion and supporting brief are filed and served."). Plaintiff states in his Response that he was "late to respond" because he was "without funds at the time for postage, and the process to attain 'indigent postage' takes a waiting of a

month,” but he received “support from family so now postage is stocked.” (Filing 75.)

Out of an abundance of caution, the court will liberally construe Plaintiff’s untimely Response as a motion to submit his brief in opposition to Defendant Haith’s and Kohl’s Motion to Dismiss out of time, which motion will be granted. Accordingly,

IT IS ORDERED that:

1. Plaintiff’s Response (filing 75), construed as a motion to submit his brief in opposition out of time, is granted.

2. Defendants Haith and Kohl shall have 7 days from the date of this Memorandum and Order to file a reply brief if they so choose. Upon receipt of Defendants’ reply brief or, if no reply brief is filed, after the expiration of the time period for filing the reply brief, the court will consider the Motion to Dismiss ripe for decision.

3. The Clerk of Court is directed to set a pro se case management deadline using the following text: **November 12, 2021**: check for Defendant Haith’s and Kohl’s reply brief.

4. The Clerk of Court is further directed to correct the docket text for Plaintiff’s Response, Filing 75, to read: “RESPONSE to MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM 66 on behalf of Plaintiff Brandon A. Goodwin.” Plaintiff’s Response (filing 75) does not respond to the Motion to Dismiss and/or Motion for Judgment on the Pleadings filed by Defendants Hughes and Schulz (filing 69).

5. Plaintiff is advised that he has until November 18, 2021, to file a brief in opposition to the Motion to Dismiss and/or Motion for Judgment on the Pleadings filed by Defendants Hughes and Schulz (filing 69).

6. The Clerk of Court is directed to set a pro se case management deadline using the following text: **November 18, 2021**: check for Plaintiff's brief in opposition to Filing 69.

Dated this 5th day of November, 2021.

BY THE COURT:



Richard G. Kopf  
Senior United States District Judge